

## **REMARKS**

### **Summary of the Office Action**

Claims 1, 6, 9, 20, 21 and 52-64 are currently pending in this application. Claims 61-64 were withdrawn by the Examiner. Claims 1, 6, 9, 54, 55 and 57-60 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,033,841 to Maddux (referred to herein after, as "Maddux"). Claims 1, 6, 9, 20, 21, 52-54, 57 and 60 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,263,528 to Husler (referred to herein after, as "Husler"). Claim 56 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Maddux in view of U.S. Patent No. 6,295,676 to Warner (referred to herein after, as "Warner") or U.S. Patent No. 4,429,427 to Sklar (referred to herein after, as "Sklar"). Claim 56 also stands rejected under 35 U.S.C. §103(a) as being unpatentable over Husler in view of Warner or Sklar.

### **Summary of the Applicant's Response**

Claim 1 is currently amended. Claims 6, 9, 20, 21 and 52-60 are previously presented. No new matter is added. Applicant hereby traverses the rejection and respectfully requests reconsideration in view of the remarks set forth below.

### **Response to Rejections under §102(b)**

As stated in the MPEP §2131, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Amended claim 1 is directed to an adjustable bed mattress having a substantially rectangular sleeping surface and a pivoting member attached to an exterior portion of a major surface of the mattress. The pivoting member is configured as a tubular sleeve that extends outwardly from the major surface and is adapted to receive an attachment bar for attachment to an adjustable bed frame.

Maddux relates to spring mattresses for hospital adjustable beds composed of sections of spring assemblies that are hingedly connected to each other so as to accommodate for reclining the sections to different angular positions relative to one another. Maddux is directed to the same subject matter that applicant has identified in the background section of the specification as being disadvantageous; the mattress in Maddux has multiple segments that correspond to pivot points of the bed frame. They are typically less comfortable than a conventional single-segment mattress and often wear out at pivot points.

Maddux does not disclose the adjustable bed mattress as recited in the claims. In particular, Maddux does not disclose a mattress having pivoting member configured as a tubular sleeve and disposed on an exterior portion of the mattress and extending outwardly therefrom. The Office Action alleges that Maddux discloses a pivoting member 15. Applicant respectfully disagrees. Maddux merely shows a webbing 15 used to connect the separate sections of the multi-section spring mattress. (See Col. 3, line 64 - Col. 4, line 5). Maddux clearly states that the "webbing 15 [is] looped or bound about the edging helical of the adjoining end rows of the two sections." (See *Id.*). Figure 5 shows this webbing 15 as being an excess piece of material connecting two sections of the multi-section mattress wherein the looped portion is located in the interior of the mattress. Therefore, it is evident that the webbing 15 is not a tubular sleeve pivoting member as recited in the claims because it is not disposed on an exterior portion of the mattress and it does not extend outwardly therefrom. Therefore, Maddux does not describe all the elements of claim 1 as is required by MPEP §2131 to make a proper rejection under §102.

Moreover, Maddux does not disclose the pivoting member being adapted for attachment to an adjustable bed frame. In particular, Maddux's webbing 15 does not attach to an adjustable bed frame or any mattress supporting structure. Instead, the multi-section mattress in Maddux is secured to a mattress supporting structure of the bed by straps 20. (See Col. 4, lines 39-46). These straps 20 are attached to end portions of central section 13 of the mattress and to each other, thereby securing the mattress. The straps 20 are not configured as a tubular sleeve and are therefore not the pivoting members. Thus, there is nothing in Maddux that describes a pivoting member for attaching

the mattress to an adjustable bed frame. Therefore, Maddux does not describe all the elements of claim 1 as is required by MPEP §2131 to make a proper rejection under §102.

Next, Husler relates to a device for lying on or sitting having a mattress, a lath grid with a plurality of laths and springy longitudinal beams that provide support for the lath grid. The mattress is not described as being a mattress for an adjustable bed and these springy longitudinal beams are merely support devices underneath a lath grid; they do not serve as a pivoting member and are not described as being located at pivot points about which the mattress can be adjusted.

The Office Action alleges that Husler discloses a pivoting member 51 adapted to receive an attachment bar 5. Applicant respectfully disagrees. Husler does not disclose the pivoting members as being attached to a major surface of the mattress. Element 51 in Husler is a beam sheath that encloses a springy longitudinal beam 5. The beam sheath 51 or the springy longitudinal beam 4 are not described or illustrated as being attached to a major surface of the mattress, let alone being disposed on an exterior portion of the surface. Instead, the beam sheath 51 is clearly described as being "fixed to the lath grid cloth 1" which in turn encloses a plurality of laths 2. (See Col. 3, lines 35-38). The beam sheaths 51 are further described as being "fixed to lath grid cloth in a permanent or detachable manner." (See Col. 3, lines 44-45, 55-58). In contrast, claim 1 explicitly recites the tubular sleeve pivoting members as being attached to the mattress surface. Therefore, Husler does not describe all the elements of claim 1 as is required by MPEP §2131 to make a proper rejection under §102.

Moreover, Husler does not disclose the pivoting member as being adapted for attachment to an adjustable bed frame. Husler merely states that the device is "positioned directly on the floor or on a support frame or on the beams of a bed frame." (See Col. 1, lines 53-55). There is nothing in Husler that describes the beam sheath 15 or the springy longitudinal beams 5 as being attached to a bed frame, moreso an adjustable bed frame. In fact, Husler does not describe any adjustable bed frame, and fails to describe any portion of the device as being attached to any support structure. Yet, these are explicitly stated material of claim 1. Therefore, Husler does not describe all the elements of claim 1 as is required by MPEP §2131 to make a proper rejection under §102.

Applicant therefore requests reconsideration and withdrawal of the rejection of amended claim 1. Claims 6, 9, 20, 21, 52-55 and 57-60 depend from claim 1 and add further limitations thereto. Thus, applicant request reconsideration and withdrawal of the rejections of these claims, as well.

### **Response to Rejections under §103(a)**

Warner is directed to a mattress construction having a main sleep area with honeycomb nested rows of wire springs, and a perimeter trim formed from pocketed wire springs. Sklar is directed to a spring reinforced seat cushion having a main body panel of foam material and a pair of oppositely disposed seat faces. Warner or Sklar, alone or in combination, do not teach or suggest an adjustable bed mattress having a mattress and pivoting member as recited in independent claim 1.

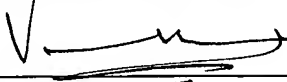
In view of the above remarks, neither Maddux nor Husler nor Warner nor Sklar, alone or in combination, teach or suggest each and every element of independent claim 1. To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Because claim 56 depends from, and is limited by, claim 1 and adds further limitations thereto, the §103 Rejection of this claim should also be withdrawn.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

We believe that we have appropriately provided for fees due in connection with this submission. However, if there are any other fees due in connection with the filing of this Response, please charge our Deposit Account No. 18-1945, under Order No. SMCY-P01-081 from which the undersigned is authorized to draw.

Dated: December 6, 2007

Respectfully submitted,

By   
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**AMENDMENTS TO THE DRAWING**

Applicant amends the drawings to overcome draft-person's rejections.

Attachments: 7 Replacement sheets (Figure 1-11)